APPENDIX

LETTERS

MARCH 8, 1944.

Honorable FRANCIS M. SHEA,
Assistant Attorney General,
Department of Justice,
Washington, D. C.

DEAR SIR: You have requested that I furnish to you a statement with regard to the question whether periods of inactive commissioned status on the retired list of the Army may be counted in computing the years of service of an officer of the Regular Army for the purpose of determining eligibility for retirement under section 1 of the act of 30 June 1882 (22 Stat. 118; 10 U. S. C. 942).

The cited section provides in pertinent part that "when an officer has served forty years * * * he shall, if he make application therefor to the President, be retired from active service and placed on the retired list * * *." In an opinion dated 30 April 1936 (JAG 210.85) a former Judge Advocate General of the Army expressed the view that the period of time during which an officer, prior to his restoration to the active list under the act of 4 March 1915 (38 Stat. 1068), occupied the status of a retired officer and performed no active military service could not be included in computing his service for retirement under the section mentioned above. The conclusion stated in the opinion dated 30 April 1936, is

in harmony with what has been the accepted practice in administering the cited section for many years and I regard it as legally sound. Accordingly, it is my opinion that the question presented should be answered in the negative.

Very sincerely yours,

/s/ MYRON C. CRAMER,
Myron C. Cramer,
Major General,
The Judge Advocate General.

MARCH 8, 1944.

Honorable FRANCIS M. SHEA,
Assistant Attorney General,
Department of Justice,
Washington, D. C.

MY DEAR MR. SHEA: This is pursuant to your inquiry of this date as to whether time spent on the Retired List may be counted in the computation of 40 years service under the Act of 30 June 1882.

Since the passage of the above statute the War Department has considered only active duty in computing 40 year service. Time spent by an officer on the Retired List has never been counted as part of the 40 year period of service required by the statute. Prior to this case no attempt has ever been made, according to our records, to have retired service counted for purposes of retirement under this Act.

Sincerely yours,

/s/ C. B. LEASURE,
C. B. Leasure,
Lt. Col., A. G. D.

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